

*Delaware's Reentry Drug Court:
A Practical Approach
to
Substance Abusing Offenders*

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Prepared by:
Richard S. Gebelein
Superior Court of Delaware, USA

This paper is designed to explore changes in the role of the judge in managing sentences imposed upon substance abusing criminal offenders in the United States, in particular in Delaware. It is hoped that it will demonstrate some of the potential benefits of such involvement as well as the difficulties that must be overcome to make sure such involvement is successful. It will focus on the experience of a small state -- Delaware. In the United States most innovative practices in the criminal law originate in the States.¹ It is hoped that Delaware experience may be of some value to those initiating programs in other nations.

BACKGROUND: UNITED STATES EXPERIENCE

It is accepted by most observers of the various state court systems that the past fifteen years have shown a definite change in philosophy with respect to the role of the judge in sentence making and management. Prior to the late 1980's American judges in most state criminal justice systems would, at the time of the sentencing decide as to whether to incarcerate an offender or to supervise the individual in the community and for how long to do either. If the decision was to incarcerate, the offender under most systems would be transferred to the executive department control. This executive agency would be in a state prison system if the sentence

¹More than 90% of all criminal prosecutions that take place within the United States are brought in State Courts by state and local prosecutorial officers. Those cases are brought under state laws that differ widely in both substance and procedure. Thus it is virtually impossible to generalize about the "U.S. Criminal Justice System" as it actually involves more than 50 separate systems. It should be noted that the Federal Government encourages experimentation at a state or local level by offering grants and promoting initiatives through a number of federal agencies.

was longer than 1 or 2 years the threshold for most states; or in a county or a local jail system if the sentence was for less than the threshold established. These local jails are run by local units of government in most states. In either event, the independent judiciary's control over the offender would generally end at the time sentence was pronounced.

If an offender received a community sentence, however, the court would generally retain jurisdiction to enforce the conditions of the community sentence. In many jurisdictions probation officers are employees of the court system. In other systems the probation officers work for an executive department or agency.

Under most state systems, post incarceration supervision was under the executive through a parole board or agency. In some states, a "split sentence" was possible wherein an offender would be sentenced to both incarceration and a subsequent period of community supervision. How these sentences were enforced differs widely from jurisdiction to jurisdiction. The court's traditional role however in most jurisdictions extended only to the enforcement of those conditions imposed at the time of sentencing. Once the offender was released to community supervision after serving any period of incarceration the court would be called upon only when the offender violated these conditions.

The rise of the use of community punishments ("alternatives to incarceration", "community corrections", "intermediate sanctions") in the late 1970's and 1980's began to blur the role of the court and the role of the executive departments in both

formulation and implementation of a sentencing plan. Courts began to experiment with programs such as “shock incarceration,”² electronic home confinement in lieu of custody, restitution or work centers, and in a few jurisdictions “reverse split sentences.”³ These programs began to engage the judge more actively in the management and modification of the sentences imposed. These modifications could include additional conditions, impose sanctions or grant rewards.

THE DELAWARE EXPERIENCE

In Delaware, legislation suggested by the state Sentencing Commission (SENTAC) was enacted that incorporated community punishments into a complex sentencing structure that consisted of five levels of supervision or punishment.⁴ Under that system the sentencing judge must first devise or pronounce a sentencing plan that includes several levels of supervision. The judge can retain control over the modification of the custody levels, and is the only one with power to move an offender from level V (incarceration) to level IV (quasi incarceration); or from level IV to level III (intense community supervision); and vice versa, at any time other than

²A sentence by the judge to jail (less than 1 year) or prison (more than 1 year) that is reviewed by the judge after a certain period of custody is served usually 30-60 days and is then usually modified or suspended for a community punishment that is then enforced by the Court.

³A “reverse split sentence” is one that includes a community punishment followed by a period of incarceration. The judge can then suspend imposition of the period of incarceration if the offender performs adequately on community supervision.

⁴See 64 Del. Laws, Ch. 402 (1984); 65 Del. Laws, Ch. 206 (1986); 11 Del.C. §§ 4204, 4205.

as specified in the original sentencing order.

In Delaware, since the probation department is part of the Department of Correction, the executive retained concurrent control over movement up and down between the three lowest levels of supervision. This system became operational in 1987 and placed a significant new responsibility on Delaware judges with regard to both sentence imposition and sentence management. It has led to far more hearings by the Court, both to violate offenders as well as to modify sentences and to change the condition of supervision.

THE DRUG PROBLEM

During the late 1980's, Delaware along with most other states was overwhelmed with drug arrests and prosecutions. Like many other states, Delaware had passed mandatory sentencing laws for drug offenders, and had increased enforcement efforts aimed at drug activity. Admissions to prison for all drug offenses was increasing dramatically. In addition many offenders with substance abuse problems were recycling through the criminal justice system at an alarming rate. Under the auspices of the Governor, the Criminal Justice Council and the State Sentencing Commission, Delaware established a cross jurisdictional committee to make recommendations on solving the dual problems of the crime committed by substance abusing offenders, and the strain placed upon the criminal justice and corrections systems

It was known that addicted offenders were far more criminally active,

committing many criminal acts a month to support their habits. It was also known that quality substance abuse treatment could in many cases help an addict to achieve longer and longer periods of abstinence. With addiction under control, the criminal activity of the individual was reduced. Delaware had earlier established a good quality therapeutic community treatment program inside its prison system. Yet, in spite of that good substance abuse treatment intervention the same offenders continued to be arrested and imprisoned. The Committee wanted to know why.

That Committee identified a number of problems with how substance abuse treatment was being provided to the offender population in Delaware. Indeed, the Committee found that lack of coordination and case management of the offender led to inefficient use of resources, missing of opportunities for meaningful treatment, offenders not receiving treatment (nor being identified as having a substance abuse problem) while under criminal justice control and that there were gaps in the treatment continuum.⁵ Perhaps the most glaring deficit in the system was the gap between prison based treatment and any aftercare in the community. Many offenders would relapse almost immediately after release and before becoming engaged in any form of community treatment. Often the community treatment that was arranged was not consistent with nor of similar modality to that received in prison and/or jail.

In addition, the Committee was able to observe that the prison population that

⁵ A Coordinated... at pp. 13-14.

was growing the fastest was also the most heavily drug-involved — those who were incarcerated as a result of their failure to comply with sentence conditions while on probation or parole.⁶ All of these failed probationers had been under the control of the correctional/criminal justice system one or more times and yet most had not had any substance abuse treatment while under supervision.

It was clear to the Committee that the correctional systems and treatment systems were both fragmented and lacked meaningful coordination within each system as well as between systems.⁷ In those cases where a need was established and treatment provided, it was done in a disconnected fashion. Gaps resulted because of authorization procedures, waiting lists, and communication problems between criminal justice systems and treatment providers. There was no process in place to track individual offenders in treatment, and no system for examining the utilization or effectiveness of treatment for offenders overall. The Committee saw a need for a continuum of treatment that would have to be coordinated by stable case management.⁸

This case management could ensure that treatment be started earlier and continued without gaps as the offender moved through complex levels of custodial

⁶A Coordinated Approach to Managing The Drug Involved Offender, Treatment Access Center, March 11, 1994, pp. 12 - 14.

⁷ Effective Management of Drug Involved Offenders, Supra. At pp. 4 - 6.

⁸ Id., at pp. 8 - 11.

and community supervision, as well as through treatment that included initial interventions, transitional, and aftercare services.

THE PROPOSED SOLUTIONS IN DELAWARE

The Committee focused on the TASC case management model and Drug Court as means to span the range of correctional interventions, and the full range of institutional and community-based treatment programming. TASC is a program model and a methodology designed to integrate the criminal justice and treatment systems by providing client-centered services, including screening, assessment, treatment planning and case management services, referring clients to substance abuse treatment, other services, monitoring client progress, and facilitating communication with both justice and treatment. Drug Court is a non-adversarial process where the Court compels treatment, maintains active judicial involvement and modifies its sentence to accomplish the purpose intended.

It was also clear to the Committee that for this case management to be able to function it would be necessary to centralize authority, coordinate treatment, supervision and custody. This would require bringing different agencies and resources together. It was decided to have the Court serve as the focal point of this effort. It was also clear that treatment resources were scarce and a target population would have to be identified.

Delaware was fortunate to have the opportunity to intensively study its criminal offender population at all levels of supervision – both institutional and community

based – to identify substance abuse and other treatment needs through grants from the Edna McConnell Clark Foundation and the Office of Justice Programs, US Department of Justice.

A comprehensive needs assessment of offenders in the system was accomplished while Delaware was designing its system to deal with these offenders. The study established that of all the offenders under criminal justice control, those with the highest level of need for intensive substance abuse treatment were those incarcerated for violating probation or parole.

The Committee examined the newly emerging drug court model. At that time, the few existing drug courts were diversionary courts that assisted in case management and brought immediate treatment engagement to drug offenders in lieu of further criminal processing. This was usually for first time offenders with less serious criminal charges. The committee recognized the advantages of this diversionary approach and adopted it as one key element of Delaware's response to the overall problem.

The Committee however, recognized that the drug court benefits, including ongoing judicial involvement, immediate sanctions, strict accountability and flexibility in sentence modifications (both as to rewards and sanctions) could well be adapted for use with the group of serious felony offenders, i.e., probation-parole violators, who were back before the Courts frequently on account of new felony charges.

These, the offenders with the most serious need of treatment and with the

most impact on the criminal justice system could be given the opportunity to resolve new charges in an expeditious fashion, receive a treatment oriented “addiction” sentence, and then be closely monitored and controlled both in custody and upon reentry to the community.

THE DELAWARE REENTRY DRUG COURT:

Marrying the Drug Court model with a case management infrastructure provided by TASC, Delaware designed its Reentry - Drug Court.

The Court would schedule a case review hearing for any individual who while serving community supervision for a felony was accused of a new felony charge. If the offender at this less adversarial proceeding elected to resolve the new charges, the Court would take that into account in sentencing. These individuals would have a substance abuse evaluation and if indicated, the Court would impose court ordered treatment as part of the sentence. That sentence would likely be a so called “addiction sentence” in which the individual would be ordered to complete an in-prison treatment program, or a halfway house treatment program, or an out-patient program, or in many cases all three. Custodial supervision would be adjusted to meet the treatment goals.

Many of those who agree to resolve their charges at the Reentry Court Case Review will begin their “addiction” sentence in residential treatment in jail (or prison). Thus, since it’s beginning in 1993, Delaware’s Reentry Drug Court has been managing those offenders’ reentry into the community after completion of their

residential treatment.

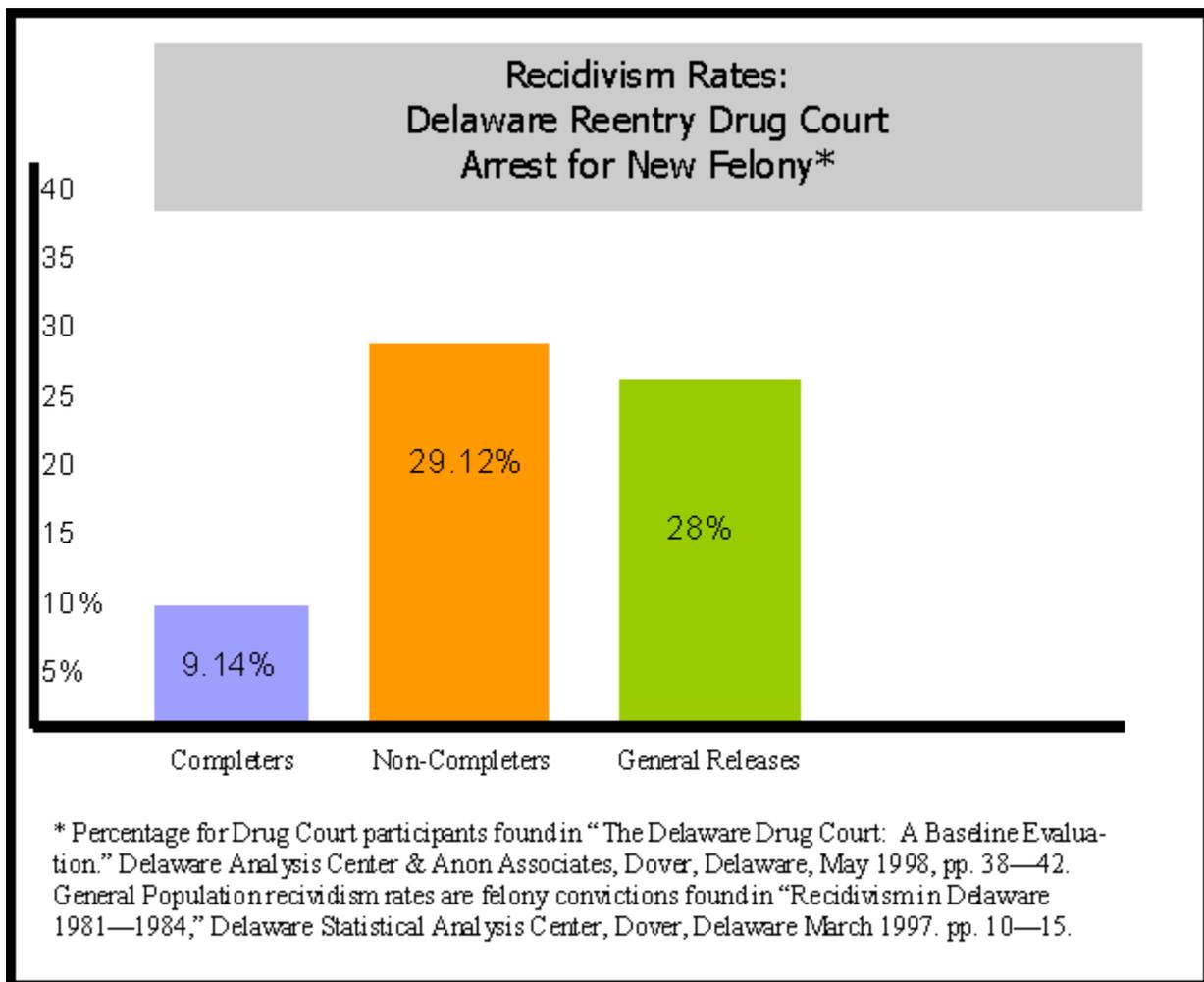
The key to the success of this program is good case management that stays with the offender as that offender moves from Delaware's excellent prison based therapeutic community program, (Key) into a half-way house program or to intensive outpatient treatment without any break or gap in treatment. Encouraged and congratulated numerous times at status hearings before the Court at each step of this transition, the offender does not "float" during the conclusion of one program and the commencement of another, with the high risk for relapse and/or recidivism that discontinuity often engenders.

Any deviation from the treatment plan or serious breach of condition can result in sanctions by the Court. Some of those sanctions include more frequent court appearances, fines, community service, preparing reports, strict curfew, more treatment, as well as confinement. The Court can also reward compliant behavior by granting incentives. These might include a less strict curfew, less court appearances, a reduction in surveillance, time cut from supervision, etc.

Formal graduations are held for those who complete the treatment plan, stay arrest and drug free.

SOME ENCOURAGING RESULTS:

Although a rigorous scientific study has not been done, and indeed would be most difficult to accomplish given the subject being studied, some encouraging comparisons can be made. A study was accomplished of the first several years of the court's operation. While the numbers studied were small it was clear that this approach seemed to have a beneficial impact on criminal recidivism. When the results of this study are compared with a general recidivism study it is quite encouraging. As the following chart indicates successful completers of the program are far less likely to be arrested for a new felony offense during the 18 months post



completion than either non completers or the general prison releasees.

In addition, in the three years after the Reentry Drug Court began operation in October 1993, the numbers of drug offenders entering prison was reduced by more than 10%, reversing a trend of steadily increasing numbers for the five years previous to its initiation.

CONCLUSION:

While there is no silver bullet that will solve the problems of crime and substance abuse, it is clear that treatment even if coerced is one essential element to the global solution of this problem.